

Bill No.: HB 3588
Author: Rep. Mike Krusee (R-Taylor)
Sponsor: Sen. Steve Ogden (R-College Station)

Title: Omnibus Transportation Bill

Summary:

ARTICLE 1: Trans-Texas Corridor

This article provides for the establishment, designation, construction, and operation of a system of multimodal facilities including toll roads, rail facilities, and utilities to be known as the Trans-Texas Corridor. The legislation amends the Transportation Code by adding a new chapter that provides the commission and the Texas Department of Transportation (TxDOT) with certain powers necessary to construct and operate the Trans Texas Corridor.

The legislation broadens the authority of the department and the commission with respect to financing the corridor. The department shall encourage the participation of private entities in the planning, design, construction, and operation of corridor facilities. The department may use contributions from governmental entities, as well as loans, grants, and reimbursements from the federal government. The commission may issue bonds for the construction of the corridor. And it may transfer funds from the State Infrastructure Bank.

The department may enter into comprehensive development agreements as it is authorized to do so under Chapter 361 with regard to turnpikes (see Article 15 for further information on comprehensive development agreements).

The commission may establish, assess, and collect tolls and fees for use of corridor facilities. It may grant franchise rights and exclusive and non-exclusive access licenses. The commission can enter into agreements with a rail operator, public utility, private utility, communications system, common carrier, transportation system, or other entity for the common use of any facility.

The commission is authorized to purchase options to acquire real property in advance of the final determination of the corridor route. The department is granted a right of entry and “early possession” authority for the corridor as it is currently authorized to do so for turnpikes.

The law specifies restrictions and requirements for the commission and TxDOT regarding public meetings and hearings and conducting, or approving, all required environmental evaluations or studies. The bill would allow the commission to establish speed limits and vehicle weight limits for the corridor within certain specifications.

There are numerous limitations on the department's financial participation in activities associated with the corridor. The department may not annually expend out of the state highway fund more than an amount equivalent to 20 percent of the obligation authority under the federal-aid highway program distributed to Texas in that year for the purposes of acquiring rights of way, initial construction of the corridor, and grading and bed preparation for non-highway components of the corridor. This limitation does not apply to money spent for preliminary engineering, studies, operation, and maintenance or to expenditures of bond proceeds and revenue collected from the corridor.

In addition, each fiscal year the department may expend not more than \$25 million for the construction or purchase of non-highway facilities on the corridor. This limitation as well does not apply to money spent for preliminary engineering, studies, operation, and maintenance or to expenditures of bond proceeds and revenue collected from the corridor. This limitation also does not apply to certain federal funds received by the department.

This article provides the commission with the tools necessary to implement the Governor's vision for this new concept in the planning, financing, and construction of transportation in Texas. As presently envisioned the corridor is a planned 4,000-mile network of roads up to 1,200 feet wide with separate lanes for passenger vehicles and trucks. The corridor also will include high-speed passenger and freight rail lines, as well as conventional commuter and freight rail lines. The corridor will also include a 200-foot-wide dedicated utility zone.

ARTICLE 2: Regional Mobility Authorities

The law provides to a Regional Mobility Authority the power of eminent domain and the power to issue revenue bonds. It allows the Transportation Commission to authorize the creation of an RMA for the purposes of constructing, maintaining, and operating transportation projects in a region of the state. An RMA can establish tolls and may lease part of a transportation facility for hotels, gas stations, stores, garages, railroad tracks, or restaurants. It allows the commission to convert a segment of the non-tolled state highway system to a turnpike project and transfer that segment to an authority. It requires the authority to reimburse the commission for the cost of a transferred highway unless the commission determines that the transfer will result in substantial net benefits to the state, the department and the traveling public.

The legislation allows an authority to acquire, construct, operate, maintain, expand or extend a transportation project in a county that is not part of the authority if the transportation project in the affected county is a continuation of the authority's transportation project extending from an adjacent county.

It allows an authority to lease, sell, or convey a transportation project to a governmental entity with the approval of the governing body of the governmental entity to which the project is transferred. It establishes an offense for an operator of a vehicle who fails to pay the proper toll. It allows an authority to designate a turnpike project or a portion of a

project as a controlled-access toll road. It allows an authority to promote the use of a transportation project through advertising or marketing. It requires RMAs to establish and meet goals for participation by disadvantaged businesses. It allows TxDOT to help pay for certain costs of an RMA project.

It allows an authority to enter into agreements with a public or private entity, a toll road corporation, the U.S., a state of the U.S., the United Mexican States, a state of the United Mexican States, another governmental entity, or a political subdivision, in order to study the feasibility of a transportation project or to acquire, design, finance, construct, maintain, repair, operate, extend or expand a transportation project. It allows an authority to enter into comprehensive development agreements. In the event that an authority is requested by the commission to participate in the Trans Texas Corridor, the authority shall have all powers of the department related to the development of Trans-Texas Corridor projects.

This legislation confers substantial new powers on RMAs, with whom TxDOT will frequently be working. TxDOT and the commission will coordinate with RMAs on transportation planning, financing, construction, and operation of highways. As more of these responsibilities are undertaken by RMAs, the department will be able to direct resources toward other critical needs in the region.

ARTICLE 3: Advanced Acquisition

The commission may purchase an option to acquire real property for possible use in a transportation facility, before a final alignment has been determined. The commission may not make an advance acquisition by condemnation. At the request of TxDOT, the General Land Office may manage the property.

Recognizing that property values increase over time, it is expected that the department would realize savings in acquiring property at today's value, rather than the expected higher, future value. It is believed these benefits will more than offset the cost of purchasing these options.

ARTICLE 4: Rail

The legislation authorizes the department to plan, construct, maintain and operate rail facilities or systems, including the acquisition and development of existing facilities. Permissible sources of revenue are: appropriations from the state highway fund that are not otherwise dedicated (i.e. vehicle registration fees and taxes on motor fuels), bonds secured by the Texas Mobility Fund, donations, and the proceeds of revenue bonds. Utilities enjoy the same right to occupy rail right of way as they currently do with respect to highway right of way.

The effect of this new rail authority will most likely be determined by the level of available funds. Total funds disbursed cannot exceed \$12.5 million unless they are for rail on the Trans Texas Corridor, acquisition of abandoned rail facilities, grading and rail

bed preparation or funds derived from bonds, gifts, private donations, or certain Federal funds. The department is strongly encouraged to plan and construct rail adjacent to the SH-130. The commission shall promulgate rules in order to administer the requirements of this new chapter.

ARTICLE 5: Bonds

The bill authorizes the Texas Transportation Commission to issue bonds and other public securities secured by a pledge of and payable from revenue deposited to the credit of the State Highway Fund. The aggregate principal amount of the bonds and other public securities issued may not exceed \$3 billion (and may not exceed \$1 billion per year). Revenues must be used to fund highway improvement projects, with at least \$600 million of the proceeds being used to fund highway safety improvement projects that correct or improve hazardous locations on the state highway system. The commission shall adopt rules prescribing criteria for the safety-related projects. Bond proceeds may not be used for projects on the Trans Texas Corridor. The bill provides that bonds and other public securities must mature not later than 20 years after their dates of issuance, subject to any refunds or renewals. And annual expenditures may not exceed 10% of the amount deposited to the credit of the State Highway Fund in the immediately preceding year.

As per the provisions of HJR 28, the authority to issue bonds under this article is subject to voter approval of Proposition 14 on September 13, 2003.

Although this legislation technically does not provide additional funds for the department's highway improvement program, it does offer the commission the option of accelerating some construction through the issuance of debt which is then retired by existing revenues to the State Highway Fund. Recognizing that the annual debt service on \$3 billion over 20 years would be substantial, the commission would have to decide whether the benefits of constructing projects now outweigh the costs of having fewer funds available for projects in the future.

ARTICLE 6: Pass-Through Tolls

A "pass-through toll" is defined as a per vehicle fee or per vehicle mile fee that is measured by the number of vehicles using a highway. The toll revenue may be used to finance the construction, maintenance, and operation of a tolled or non-tolled state highway or another toll facility. The legislation allows the department to enter into an agreement with a public or private entity to provide pass-through tolls to be paid to a public or private entity as reimbursement for the construction, maintenance or operation of a toll or non-toll facility on the state highway system by the public or private entity. It also allows the department to enter into an agreement with a regional mobility authority, a regional tollway authority, or a county regarding the payment of pass-through tolls as compensation for the payment of all or a portion of the costs of maintaining a state highway or a portion of a state highway converted to a toll facility of the authority or county that the department estimates it would have incurred had the highway not been converted.

With transportation needs far exceeding the available sources of funding, pass-through tolling is an innovative approach to address local mobility needs, while maintaining statewide priorities. For example, if a community has a project on the state system that does not rise to the same level of urgency by the commission, the commission may choose to reimburse the locals for the project over time with the use of pass-through tolls.

ARTICLE 7: Toll Conversion

This article allows the commission to transfer segments of the non-tolled state highway system to a county toll road authority for its operation and maintenance under certain circumstances. The segment could then be tolled under their jurisdiction. At the time of conveyance, the highway would be removed from the state highway system wherein the department would have no liability, responsibility, or duty for the maintenance or operation of the highway. It allows the commission to waive all or a portion of money due if it finds that the conveyance will result in substantial net benefits to the state. Counties must use toll revenue to fund the expansion, extension, operation, and maintenance of the highway.

TxDOT is authorized to convert a segment of a free roadway on the state system to a toll facility with the approval of the county commissioner's courts in each county within which the highway segment is located.

This legislation provides the commission with a new tool to improve mobility across the state by creating additional sources of revenue, paid for by those who choose to use tolled facilities. The commission shall adopt rules to implement this article.

ARTICLE 8: Commercial Drivers License

This article expands the definition of a "serious traffic violation" to include violations that have occurred in any motor vehicle, not just a commercial vehicle, when determining qualifications for operating a commercial vehicle. This is a requirement imposed on states by the Federal Motor Carrier Safety Improvement Act of 1999 under the penalty of losing federal transportation funds if not implemented by 2005.

The Department of Public Safety (DPS) is responsible for enforcing these provisions. The penalty for non-compliance would have been a loss of 5% of federal highway funds the first year and 10% thereafter.

ARTICLE 9: County Fee Switch

This article addresses the switch between motor vehicle registration fees and motor vehicle sales tax collections on the part of counties. Beginning in 2006, the amount that counties retain from motor vehicle registration fees based on motor vehicle sales taxes will be moved, at a rate of 10% per year, from motor vehicle registration fees and Fund 0006 to motor vehicle sales tax revenues and General Revenue. After ten years, all county revenue based on motor vehicle sales taxes will be deducted from General Revenue.

The effect on the State Highway Fund will ultimately be significant. In FY 2005, counties are expected to retain approximately \$131 million in additional motor vehicle registration fees. With the enactment of this law, the State Highway Fund will realize all of this revenue by fiscal year 2015. Counties will not experience a net change in the level of funding.

ARTICLE 10: Driver Responsibility Act

This article creates a system of points and surcharges applied to the drivers license of individuals convicted of certain moving violations. The program will be implemented by the Department of Public Safety. The bill creates and credits half the revenue collected to the trauma facility and emergency medical services account. The other half is deposited in the General Revenue Fund. This measure is effective September 1, 2003 and expires September 1, 2007.

The revenue effect of this article is significant. By fiscal year 2005, the Legislative Budget Board estimates that the state's general revenue fund will realize an increase of approximately \$115 million. Revenue should increase to \$169 million in 2006 and thereafter. And \$59 million will go to the trauma facility and emergency medical services account in 2004, increasing to \$166 million by 2006 and thereafter. (Note: See Article 20 for further details on the funding side of this program as it is implemented in 2004.)

ARTICLE 11: DPS Fees to Mobility Fund

This article moves existing revenue (motor vehicle inspection fees, driver's license fees, and driver's license information fees) from the General Revenue Fund to the Texas Mobility Fund. These funds may be used to secure bonds issued to fund transportation projects, generating about \$2.5 billion in available funds for completion of critical transportation projects.

This article will have the effect of capitalizing the Texas Mobility Fund. This will have a significant effect on the department's ability to deliver transportation projects in Texas. With the movement of these funds to the Mobility Fund being effective in fiscal year 2004, the department will embark on a historic program of issuing debt to finance transportation improvements. Monies to the Mobility Fund in fiscal year 2004 will be approximately \$139 million. This will increase to approximately \$232 million in FY 2005 and then to \$233 million in FY 2006. There will be nominal growth in this amount each year thereafter. (Note: See Article 20 for further details on this program as it is implemented in 2004.)

ARTICLE 12: \$30 Additional Court Fee

The bill imposes a new \$30 court fee on traffic violations, excluding some parking tickets. Two thirds of the revenue is deposited in the General Revenue Fund, and one

third is credited to the designated trauma facility and emergency medical services account.

The Legislative Budget Board estimates that implementation of this provision by fiscal year 2005 will result in revenue gains of \$99 million in General Revenue and \$49 million in the dedicated trauma facility and emergency medical services account. This measure is effective September 1, 2003 and expires September 1, 2007. (Note: See Article 20 for further details on this program as it is implemented in 2004.)

ARTICLE 13: Public Transportation

The legislation provides for the coordination by TxDOT of the provision of public transportation throughout the state. It authorizes the Transportation Commission to adopt rules requiring state agencies that provide public transportation services to contract with TxDOT for the department to assume responsibilities of that agency relating to public transportation services. It also authorizes the commission to require public transportation providers to provide detailed information on its public transportation services including revenue, routes and number of passengers.

It requires various health and human services agencies to contract with the department for the provision of public transportation services.

The department shall identify gaps and overlaps in services. It may contract with any public or private transportation provider to arrange for services. The commission may increase or reduce funding to a public transportation provider based on whether the provider is complying fully with this chapter. It gives the department new powers to require reports from public transportation providers.

The legislation authorizes the commission to appoint the membership of the Public Transportation Advisory Committee—rather than the governor, lieutenant governor and speaker. The committee will continue to be comprised of nine members representing transportation providers, transportation users, and the general public and will advise the commission on the implementation of this new responsibility.

The affect of this article will be to allow TxDOT to combine its own contracts with those of other agencies in order to enhance efficiency.

ARTICLE 14: Conditional Grant Program

The legislation changes the eligibility requirements to participate in the Conditional Grant Program from minorities and women to "economically disadvantaged." In determining eligibility, TxDOT must give highest priority to students who demonstrate the greatest financial need and may consider whether the applicant would be the first generation of the applicant's family to attend or graduate from an undergraduate, graduate or professional program.

The effect of this article is that the Conditional Grant Program will be open to more participants.

ARTICLE 15: Turnpike

To further reflect the abolishment of the Texas Turnpike Authority Board as passed during the 2001 legislative session, the bill cleans up the turnpike chapter of the Transportation Code by substituting “department” or “commission” where “authority” or “board” previously existed.

The law allows the department to lease property for ancillary activities such as hotels, stores, restaurants, and gas stations, thereby providing an additional source of revenue for turnpike projects. The department may offer the owner of the property a percentage of the revenue associated with a particular segment of a turnpike, rather than a single fixed payment for the property. Or it may offer the property owner an exclusive or nonexclusive right to use or operate a particular segment.

Tolls can still be imposed after the bonds are paid off, to fund the construction and maintenance of other turnpike projects in the region. Turnpikes are on the state highway system and are subject to the same regulation and traffic control.

The law allows for Comprehensive Development Agreements (CDA). A CDA is an agreement with a private entity that, at a minimum, provides for the design and construction of a turnpike project and may also provide for the financing, acquisition, maintenance, or operation of a turnpike project.

The department cannot disburse money during a federal fiscal year from the mobility fund or the state highway fund under a CDA in an amount greater than 40% of the obligation authority under the federal aid highway program that is distributed to this state for the fiscal year. The law requires a private entity entering into a CDA under this bill to provide performance and payment bonds or alternative forms of security in an amount sufficient to protect the department and the payment bond beneficiaries. TxDOT can only enter into a CDA with a private equity investor if the project is identified in the Unified Transportation Program or is located on a transportation corridor identified in the statewide transportation plan. TxDOT shall pay a stipulated amount to unsuccessful proposers as compensation for proposal costs in an amount not to exceed the value of the work product contained in the proposal that can be used by TxDOT in the performance of its functions.

The law provides that the department may not enter into an agreement with the United Mexican States or a state of the United Mexican States without the approval of the governor. TxDOT cannot file a declaration of taking before the completion of all environmental documentation, including a final environmental impact or a record of decision, and all public hearings in connection with the environmental process are held.

The effect of this article is to eliminate inconsistencies within the Transportation Code with respect to the elimination of the Texas Turnpike Authority and its board. Comprehensive Development Agreements will provide the commission with the clear authority to involve the private sector in financing, constructing, and operating highways on the state system.

ARTICLE 16: Commercial Motor Vehicle Safety

The law allows the Department of Public Safety and certified municipal police to stop and enter commercial vehicles in addition to their existing authority to detain them. DPS may impose an administrative penalty against operators of commercial vehicles that violate certain safety provisions. A commercial motor vehicle is considered abandoned on the 11th day after it has been impounded, if the administrative penalty has not been paid. This article has no effect on the department.

ARTICLE 17: Nonrepairable and Salvage Motor Vehicles

The legislation redefines the criteria for determining if a vehicle is a “Salvage” vehicle by eliminating the model year and percentage of damage criteria currently used for that purpose. “Salvage” status is determined based on the extent of the cost of repairs, the salvage value of the damaged vehicle and the actual cash value of the predamaged vehicle.

The legislation amends the criteria for determining if a vehicle is a “Nonrepairable” vehicle by eliminating the year model and percentage of damage criteria currently used for that purpose. “Nonrepairable” status is based on whether or not the damage to the vehicle is of the extent that the only legitimate residual value is as a source of used parts and scrap metal.

The fee for issuance of a Salvage or Nonrepairable Vehicle Title is increased from \$3 to \$8 (Fund 001). A fee of \$8 is applied to each Salvage or Nonrepairable Vehicle Title issued in lieu of a no-charge Salvage Certificate (Fund 001). The department shall collect a \$65 fee at the time of titling a rebuilt salvage vehicle. Of the \$65 fee, \$50 is to be credited to the State Highway Fund for use by the DPS for enforcement purposes and the remaining \$15 is to be credited to the General Revenue Fund.

The law provides titling requirements and procedures for salvage and nonrepairable motor vehicles that are: acquired by an insurance company when a total loss claim is paid, self-insured, sold in a casual sale, or are deemed to be for export only.

The legislation prohibits TxDOT from issuing Salvage Certificates on or after September 1, 2003, but allows (grandfathers) rebuilding/retitling vehicles that have had a salvage certificate issued prior to that date. The law allows for voluntary application for a Salvage or Nonrepairable Vehicle Title for vehicles that fall outside the definitions of Salvage or Nonrepairable motor vehicle.

The effect of the legislation is to reduce fraud associated with the issuance of salvage certificates of title and to improve regulatory oversight of the salvage and rebuilt industries.

ARTICLE 18: Port Authority Advisory Committee

This article transfers the Texas Port Transportation and Economic Development Advisory Committee (TPTEDAC) and its duties from the now-defunct Texas Department of Economic Development to TxDOT and merges it with TxDOT's existing port authority advisory committee. The legislation increases the size of TxDOT's port authority advisory committee from 5 to 7 members.

Ports will now have representation on one committee, advising one agency with respect to improvement projects that enhance mobility, security, and economic development of Texas ports. The department will work with the committee on making recommendations to the commission.

ARTICLE 19: Miscellaneous Provisions

Section 19.01: Transportation Plan

The department's statewide transportation plan must include a component that identifies transportation improvements designed to relieve congestion. This component must not be financially constrained. In developing this component of the plan, the department shall seek opinions and assistance from officials who have local responsibility for transportation.

The plan shall include a component, published annually, that describes the evaluation of transportation improvements based on performance measures, such as indices measuring delay reductions or travel time improvements. The department shall consider the performance measures in selecting transportation improvements.

Section 19.02: Toll Equity

Previously, monies granted by the department each federal fiscal year for toll equity could not exceed 30% of the obligation authority under the federal highway-aid program distributed to Texas during that fiscal year. HB 3588 eliminates the 30% cap on the use of monies in the State Highway Fund for toll equity and changes it to a hard limit of \$800 million, excluding money required to be repaid.

The effect of this article is to allow the commission to contribute, at least in the short term, slightly more toll equity in the financing of turnpike projects. Toll equity could make more highway projects toll-viable, which would have the effect of freeing-up state highway funds for other highway improvements around the state. Projects would be funded in part with bond proceeds and other funds.

Section 19.03: Inspection Stickers

The legislation provides that vehicles with safety inspection stickers that have been lost or stolen are required to be reinspected and any applicable fees paid. However, these same vehicles are not subject to being reinspected for emissions. This article has no effect on the department.

Sections 19.04 and 19.05: Traffic Signals

The legislation provides that drivers approaching malfunctioning traffic signals shall treat them as if they were stop signs. This article has no effect on the department.

Section 19.06: School Bus Penalty

The law increases the penalty for improperly passing a school bus if the act causes serious injury or there are multiple offenses. This article has no effect on the department.

Section 19.07: Neighborhood Electric Vehicles

A neighborhood electric vehicle or motor assisted scooter may be operated only on a street or highway for which the posted speed limit is 35 miles per hour or less. The vehicle may cross a road or street at an intersection where the road or street has a posted speed limit of more than 35 miles per hour.

A person may operate a motor assisted scooter on a path set aside for the exclusive operation of bicycles or on a sidewalk. The department, a county or a municipality may prohibit the operation of a neighborhood electric vehicle or motor assisted scooter on any street or highway if it is determined that the prohibition is necessary and in the interest of safety. This measure is effective September 1, 2003. This article has no effect on the department.

Section 19.08: Disabled Parking

The legislation adds “standing” to the prohibition on occupying a disabled parking space. To “stand” a vehicle means to halt an occupied or unoccupied vehicle. This article has no effect on the department.

Section 19.09: Metro Rapid Transit Bonds

A metropolitan rapid transit authority with a population of 1.5 million or more may issue bonds with a term of not more than five years. This article has no effect on the department.

ARTICLE 19B: Financial Responsibility Requirements

This article requires that a feasibility study be conducted on the use of a database interface software program for verifying whether a vehicle owner has established financial responsibility.

The Texas Department of Public Safety and the Department of Insurance shall conduct the study. The study must be complete prior to July 1, 2004 and those departments must issue an order stating the determination they have made. If they determine the use of this software is feasible, DPS and TDI shall implement the system before January 1, 2005, develop rules, and contract with an agent to develop, implement, operate, and maintain the system. If they determine the use of this software is not feasible, this section expires on the date the order is issued by DPS and TDI, and no further action is taken.

TxDOT shall collect an additional \$1 fee on each initial and renewed registration. The collected fees are to be deposited to the state highway fund. Subject to appropriation, the funds collected prior to August 31, 2005 are to be used to support reengineering DPS' driver's license system, and after August 31, 2005 for use by DPS, TDI, and TxDOT to carry out the provisions of this article.

If it is determined that it is feasible to develop a system to verify the financial responsibility of Texas drivers, the department may be called on to assist the DPS and TDI.

ARTICLE 20: General Provisions

This article switches among different accounts revenue derived under the Driver Responsibility Act (Article 10), DPS fees to the Mobility Fund (Article 11), and the \$30 court cost (Article 12) for fiscal year 2004. According to the LBB, the \$60 million that would have gone to GR in 2004 under the Driver Responsibility Act will instead be credited to a Texas Mobility Fund debt service account. Similarly, in 2004, \$79 million that would have gone to GR under the new \$30 court fee provision will be credited to the Texas Mobility Fund debt service account. In exchange, the \$218 million that was slated for the Texas Mobility Fund under Article 11 will go to GR in 2004.

It is widely accepted that the revenue estimates generated by the DPS fees are more accurate because this revenue stream has existed for some time. Therefore, in order to ensure that the state budget may be certified, the legislature switched revenue among these accounts for 2004.

Effective Date: Varies by Article

OPR: TTA

OCR(s): BRG, CSO, CST, DES, ENV, FIN, GSD, IRO, MCD, MNT, PTN, ROW, TPP, TRF, VTR